

Appeal No. 2015-1501

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

ROBERT MANKES V. FANDANGO, LLC

Appeal from the United States District Court,
for the Eastern District of North Carolina.

CONSENT MOTION TO CONSOLIDATE RELATED APPEALS

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Counsels for Appellant

May 18, 2015

Appellant Robert Mankes (“Mankes”) submits this Motion to Consolidate Related Appeals, *Mankes v. Vivid Seats Ltd.*, No. 15-1500 and *Mankes v. Fandango, LLC*, No. 15-1501, under Federal Rule of Appellate Procedure 3(b)(2). The appeals at issue arise from two judgments on the pleadings directed to the issue of direct patent infringement under 35 U.S.C. § 271(a) when the actions of multiple parties together perform all the steps of the claimed method. In both cases, the District Court held that there is no direct infringement because no one party performs all the steps of the claimed invention.

Appellant has discussed this motion with the Appellees Vivid Seats Ltd. and Fandango, LLC who consent to the consolidation of these appeals.

BACKGROUND

On October 14, 2013, Mankes filed separate lawsuits in the Eastern District of North Carolina against Vivid Seats Ltd. (“Vivid Seats”) and Fandango, LLC. (“Fandango”). Each of the lawsuits was for infringement of Mankes’ U.S. Patent No. 6,447,503 (“the ‘503 patent”). In each of the suits, Mankes admitted that no one party performed all the steps of the claimed invention, but that the respective parties’ business partners performed the remainder of the claimed steps.

Prior to conducting discovery on the substantive issues of the cases, both Vivid Seats and Fandango moved for judgment on the pleadings. On February 26, 2015, the court entered a judgment for Vivid Seats of non-infringement. Similarly,

on March 5, 2015 a judgment of non-infringement was entered for Fandango. On March 13, 2015, Mankes timely filed Notices of Appeal challenging both decisions. On April 15, 2015, this court set both appeals as companion cases to be assigned to the same merits panel for oral argument. [D. 14]

DISCUSSION

By this motion, Mankes respectfully requests that this Court consolidate Docket No. 15-1500 with Docket No. 15-1501. Consolidation of related appeals is appropriate "[w]hen the parties have filed separate timely notices of appeal." Fed. R. App. P. 3(b)(2).

Consolidation is appropriate here because these appeals raise the same legal issue. Both involve multi-party infringement under 35 U.S.C. § 271(a) in which two parties together perform all the steps of the claimed invention. In the cases against both Vivid Seats and Fandango, Mankes has admitted that neither party alone performs all the steps of the claimed invention, but rather that their business partners perform the remainder of the claimed steps. The issue is a pure legal determination of what actions constitute direct infringement. There are no issues regarding claim interpretation of the '503 patent.

The two cases are also procedurally identical. Each case is being appealed from a judgment on the pleadings of non-infringement of the '503 patent.

Discovery has not occurred in either case. Both cases were decided by the District Court with substantially similar opinions.

CONCLUSION

Based on the foregoing, Mankes respectfully requests that the Court consolidate its two appeals, *Mankes v. Vivid Seats Ltd., No. 15-1500* and *Mankes v. Fandango, LLC., No. 15-1501*,

May 18, 2015

Respectfully submitted,

/s/ Anthony J. Biller

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Certificate of Interest

Counsel for Appellant, Anthony J. Biller, certifies the following:

1. The full name of every party or amicus presented by me is:

Robert O. Mankes

2. The name of the real party in interest represented by me is:

Robert O. Mankes

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae presented by me are:

None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Coats & Bennett, PLLC

David E. Bennett

David D. Kalish

James R. Lawrence, III

Proof of Service

The undersigned hereby certifies that the foregoing has been electronically filed on this 18th day of May, 2015 with the Clerk of Court using the CM/ECF System, which will send notice to all counsels representing the Appellee, as follows:

Sharon L. Davis

/s/ Ujjaini Sorey
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